

§ 251.58

(4) When the rental fee is included in the fees for an authorized use or occupancy for which the United States is already receiving compensation; or

(5) When a right-of-way is authorized in reciprocation for a right-of-way conveyed to the United States; or

(6) For rights-of-way involving cost-share roads or reciprocal right-of-way agreements.

(c) No rental fee will be charged when the holder is the Federal government.

(d) No fee shall be charged when the authorization is for a noncommercial group use as defined in §251.51 of this subpart.

(e) Special use authorizations issued under §251.53(g) of this part may require as all or a part of the consideration the reconditioning and maintenance of the government-owned or controlled structures, improvements, and land to a satisfactory standard. The total consideration will be based upon the fair market value of the rights and privileges authorized.

(f) Special use authorizations involving government-owned or controlled buildings, structures, or other improvements which require caretakers' services, or the furnishing of special services such as water, electric lights, and clean-up, may require the payment of an additional fee or charge to cover the cost of such services.

(g) Except where specified otherwise by terms of a special use authorization, rental fees may be initiated or adjusted whenever necessary: (1) As a result of fee review, reappraisal; or (2) upon a change in the holder's qualifications under paragraph (b) of this section; and (3) notice is given prior to initiating or adjusting rental fees.

(h) Each ski area authorization issued under the authority of the National Forest Ski Area Permit Act shall include a clause that provides that the Forest Service may adjust and calculate future rental fees to reflect Agency revisions to the existing system for determining fees based on fair market value or to comply with any new fee system for determining fees based on fair market value that may be

36 CFR Ch. II (7-1-03 Edition)

adopted after issuance of the authorization.

[45 FR 38327, June 6, 1980, as amended at 51 FR 16683, May 6, 1986; 54 FR 22594, May 25, 1989; 60 FR 45294, Aug. 30, 1995; 63 FR 65967, Nov. 30, 1998]

§ 251.58 Cost reimbursement. [Reserved]

§ 251.59 Transfer of authorized improvements.

If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, ceases to be the owner of the authorized improvements, the authorization terminates upon change of ownership. Except for easements issued under authorities other than §251.53(e) and leases and easements under §251.53(l) of this subpart, the new owner of the authorized improvements must apply for and receive a new special use authorization. The new owner must meet requirements under applicable regulations of this subpart and agree to comply with the terms and conditions of the authorization and any new terms and conditions warranted by existing or prospective circumstances.

[63 FR 65967, Nov. 30, 1998]

§ 251.60 Termination, revocation, and suspension.

(a) *Grounds for termination, revocation, and suspension.* (1) *Noncommercial group uses.* (i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for a noncommercial group use only under one of the following circumstances:

(A) Under the criteria for which an application for a special use authorization may be denied under §251.54(h)(1);

(B) For noncompliance with applicable statutes or regulations or the terms and conditions of the authorization;

(C) For failure of the holder to exercise the rights or privileges granted; or

(D) With the consent of the holder.

(ii) *Administrative or judicial review.* Revocation or suspension of a special use authorization under this paragraph constitutes final agency action and is immediately subject to judicial review.

(iii) *Termination.* A special use authorization for a noncommercial group use terminates when it expires by its own terms. Termination of a special use authorization under this paragraph does not involve agency action and is not subject to administrative or judicial review.

(2) *All other special uses.* (i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except an easement issued pursuant to § 251.53 (e) and (l):

(A) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(B) For failure of the holder to exercise the rights or privileges granted;

(C) With the consent of the holder; or

(D) At the discretion of the authorized officer for specific and compelling reasons in the public interest.

(ii) *Administrative review.* Except for revocation or suspension of an easement issued pursuant to § 251.53 (e) and (l) of this subpart, a suspension or revocation of a special use authorization under this paragraph is subject to administrative appeal and review in accordance with 36 CFR part 251, subpart C, of this chapter.

(iii) *Termination.* For all special uses except noncommercial group uses, a special use authorization terminates when, by its terms, a fixed or agreed-upon condition, event, or time occurs. Termination of a special use authorization under this paragraph does not involve agency action and is not subject to administrative or judicial review.

(b) For purposes of this section, the authorized officer is that person who issues the authorization or that officer's successor.

(c) A right-of-way authorization granted to another Federal agency will be limited, suspended, revoked, or terminated only with that agency's concurrence.

(d) A right-of-way authorization serving another Federal agency will be limited, suspended, revoked, or terminated only after advance notice to, and consultation with, that agency.

(e) Except when immediate suspension pursuant to paragraph (f) of this section is indicated, the authorized officer shall give the holder written no-

tice of the grounds for suspension or revocation under paragraph (a) of this section and reasonable time to cure any noncompliance, prior to suspension or revocation pursuant to paragraph (a) of this section.

(f) Immediate suspension of a special use authorization, in whole or in part, may be required when the authorized officer deems it necessary to protect the public health or safety or the environment. In any such case, within 48 hours of a request of the holder, the superior of the authorized officer shall arrange for an on-site review of the adverse conditions with the holder. Following this review, the superior officer shall take prompt action to affirm, modify, or cancel the suspension.

(g) The authorized officer may suspend or revoke easements issued pursuant to § 251.53 (e) and (l) of this subpart under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(h)(1) The Chief may revoke any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089, 16 U.S.C. 534:

(i) By consent of the owner of the easement;

(ii) By condemnation; or

(iii) Upon abandonment after a 5-year period of nonuse by the owner of the easement.

(2) Before any such easement is revoked for nonuse or abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, an opportunity to present relevant information in accordance with the provisions of 36 CFR part 251, subpart C, of this chapter.

(i) Upon revocation or termination of a special use authorization, the holder must remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the authorized officer, unless the requirement to remove

§ 251.61

structures or improvements is otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but holder shall remain liable for the costs of removal and site restoration.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48 FR 28639, June 23, 1983; 60 FR 45295, Aug. 30, 1995; 63 FR 65968, Nov. 30, 1998]

§ 251.61 Modifications.

(a) A holder shall file a new or amended application for a special use authorization to cover new, changed, or additional use(s) or area.

(1) In approving or denying changes or modifications, the authorized officer shall consider among other things, the findings or recommendations of other involved agencies and whether the terms and conditions of the existing authorization may be continued or revised, or a new authorization issued.

(2) Changes during construction, or at any other time, from the approved plans or the location shown in the application or authorization shall be allowed only with the prior approval of the authorized officer.

(b) A holder may be required to furnish as-built plans, map(s), or survey(s) upon completion of construction.

(c) A holder shall obtain prior approval from the authorized officer for modifications to approved uses that involve any activity impacting the environment, other users, or the public.

[45 FR 38327, June 6, 1980, as amended at 63 FR 65968, Nov. 30, 1998]

§ 251.62 Acceptance.

Except for an easement, a special use authorization shall become effective when signed by both the applicant and the authorized officer. The authorization must be signed by the applicant and returned to the authorized officer within 60 days of its receipt by the applicant, unless extended by the authorized officer. Refusal of an applicant to sign and accept a special use authorization within the time allowed, and before its final approval and signature by an authorized officer, shall terminate

36 CFR Ch. II (7–1–03 Edition)

an application and constitute denial of the requested use and occupancy.

[53 FR 16550, May 10, 1988]

§ 251.63 Reciprocity.

If it is determined that a right-of-way shall be needed by the United States across nonfederal lands directly or indirectly owned or controlled by an applicant for a right-of-way across Federal lands, the authorized officer may condition a special use authorization to require the holder to grant the United States the needed right-of-way.

§ 251.64 Renewals.

(a) When a special use authorization provides for renewal, the authorized officer shall renew it where such renewal is authorized by law, if the project or facility is still being used for the purpose(s) previously authorized and is being operated and maintained in accordance with all the provisions of the authorization. In making such renewal, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations or other management decisions. Special uses may be reauthorized upon expiration so long as such use remains consistent with the decision that approved the expiring special use or group of uses. If significant new information or circumstances have developed, appropriate environmental analysis must accompany the decision to reauthorize the special use.

(b) When a special use authorization does not provide for renewal, it is discretionary with the authorized officer, upon request from the holder and prior to its expiration, whether or not the authorization shall be renewed. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

[45 FR 38327, June 6, 1980, as amended at 63 FR 65968, Nov. 30, 1998]

§ 251.65 Information collection requirements.

The rules of this subpart governing special use applications (§251.54 and §251.59), terms and conditions (§251.54), rental fees (§251.57), and modifications